

SERVED: November 13, 1992

NTSB Order No. EA-3717

UNITED STATES OF AMERICA  
**NATIONAL TRANSPORTATION SAFETY BOARD**  
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD  
at its office in Washington, D.C.  
on the 26th day of October, 1992

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Petition of )

PAUL W. GIESA )

for review of the denial by )  
the Administrator of the )  
Federal Aviation Administration )  
of the issuance of an airman )  
medical certificate. )

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Docket SM-3864

**OPINION AND ORDER**

Petitioner appeals from the initial decision and order rendered April 10, 1991, by Administrative Law Judge Jerrell R. Davis after an evidentiary hearing.<sup>1</sup> By that order, the law judge affirmed the Federal Air Surgeon's denial of petitioner's application for a third class airman medical certificate due to a history of narcolepsy and resultant amphetamine use necessary to control this condition.<sup>2</sup> The law judge found that petitioner

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<sup>1</sup>A copy of the initial decision is attached.

<sup>2</sup>The Federal Air Surgeon issued a final denial of airman

did not prove his qualifications for a medical certificate under section 67.17, subsections (d)(1)(i)(d), (d)(2)(ii), and (f)(2) of the Federal Aviation Regulations ("FAR," 14 C.F.R. Part 67) by a preponderance of the substantial, reliable, and probative evidence.<sup>3</sup>

(..continued)

medical certification to petitioner on August 8, 1990.

<sup>3</sup>The regulations read, in pertinent part:

"§ 67.17 Third-class medical certificate.

\* \* \* \*

(d) Mental and neurologic--

(1) Mental.

(i) No established medical history or clinical diagnosis of any of the following:

\* \* \* \*

(d) Drug dependence. As used in this section, drug dependence means a condition in which a person is addicted to or dependent on drugs other than alcohol, tobacco, or ordinary caffeine-containing beverages, as evidenced by habitual use or a clear sense of need for the drug.

\* \* \* \*

(2) Neurologic.

(ii) No other convulsive disorder, disturbance or consciousness, or neurologic condition that the Federal Air Surgeon finds--

(a) Makes the applicant unable to safely perform the duties or exercise the privileges of the airman certificate that he holds or for which he is applying; or

(b) May reasonably be expected, within 2 years after the finding, to make him unable to perform those duties or exercise those privileges; and the findings are based on the case history and appropriate, qualified, medical judgment relating to the condition involved.

\* \* \* \*

(f) General medical condition:

(2) No other organic, functional or structural disease, defect, or limitation that the Federal Air Surgeon finds--

(i) Makes the applicant unable to safely perform the duties or exercise the privileges of the airman certificate that he holds or for which he is applying; or

(ii) May reasonably be expected, within two years after the finding, to make him unable to perform those duties or exercise those privileges;

On appeal, petitioner, appearing pro se, argues that the law judge erred in denying his petition and maintains that the evidence supports that he is qualified to receive a medical certificate. We disagree.

At the hearing, petitioner admitted that when he was diagnosed with narcolepsy in 1938, he began taking 10 milligrams of Benzedrine daily. He testified that he now takes between 80 and 120 milligrams of Dexedrine a day.<sup>4</sup> He maintains that this medication controls his narcolepsy effectively enough so that he has no trouble functioning normally. He also testified that his last medical certificate was issued to him in 1943 and he last flew an aircraft as pilot-in-command in 1945 when he was in the military. At that time, he had a total of 1100 hours flight time. The evidence also revealed that petitioner applied for a medical certificate at least four times in the past 30 years and been rejected each time.<sup>5</sup>

Despite advice to the contrary, petitioner refused to identify his treating physician or make his current medical records available at the hearing and offered no expert

(..continued)

and the findings are based on the case history and appropriate, qualified, medical judgment relating to the condition involved."

<sup>4</sup>In his opinion, the law judge stated that the petitioner's admitted dosage was 80 to 100 milligrams daily, however, petitioner actually admitted to taking between 80 and 120 milligrams daily. (Tr. at 15).

<sup>5</sup>Petitioner was denied a medical certificate in 1964, 1968, 1972, 1976.

testimony.<sup>6</sup> He claimed that no one could discuss his condition better than he, since he had been successfully regulating his own dosage of medication for the past 50 years.<sup>7</sup>

A neurologist, who was also a pilot and an aviation medical examiner, testified as an expert medical witness for the Administrator about narcolepsy and amphetamine use. The doctor classified Dexedrine as an amphetamine, a habit-forming drug, and quoting from the Physician's Desk Reference, identified the daily range dose of the drug as between 5 and 60 milligrams. He characterized the dosage petitioner admitted to taking as "whopping" and, based on that dosage, concluded that petitioner had a fairly severe case of narcolepsy.

Under section 821.25 of the Boards Rules of Practice, a petitioner who appeals the denial of a medical certificate has the burden to prove by a preponderance of the substantial, reliable, and probative evidence his qualification for the certificate. Petition of Dennis, 2 NTSB 2145, 2146 (1976). It was not error, as petitioner contends, nor should it come as any

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<sup>6</sup>Among the records available to the law judge were 1) a report, submitted by petitioner, authored by a Dr. Hobart H. Dumke and dated December 13, 1967, in which the doctor opined that petitioner was physically qualified to fly; 2) petitioner's second class medical certificate, dated July 28, 1943; 3) reports of medical examinations, dated August 25, 1964, and October 14, 1964; 4) a medical report, dated October 22, 1964, containing statements attributed to the petitioner describing what happens to him when he has "one of those spells"; 5) medical reports dated September 16, 1947, October 22, 1949.

<sup>7</sup>He stated in his brief, that "I am, I have been and declare myself to be a medical anomaly and therefore ordinary criteria do not apply." Petitioner's brief at 4.

surprise to him, that the law judge accorded more weight to the doctor's testimony than to petitioner's statements. The law judge informed petitioner by letter prior to the hearing that it was in his best interest to have an expert medical witness testify on his behalf regarding his fitness to possess a medical certificate. Nonetheless, petitioner chose to offer only his own testimony and documentation of physical examinations that took place many years ago to prove his case, and refused to make available any medical records or statement from his current physician.<sup>8</sup>

Based on the foregoing, we find that petitioner has not met the burden of establishing that, more likely than not, his narcolepsy and the medication he takes to control it do not disqualify him from obtaining a medical certificate under FAR section 67.17, subsections (d)(1)(i)(d), (d)(2)(ii), and (f)(2).

As a result, we find that petitioner's medical history is not compatible with aviation safety.

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<sup>8</sup>Petitioner also contends that the law judge erroneously allowed into evidence medical evaluations that he believed were "slanderous and defamatory." The Administrator submitted these documents because he did not have any current medical reports available, as petitioner would not disclose the name of his treating physician or any current reports. The admission of this information is inconsequential, however, since the law judge gave no indication that he relied on anything but the neurologist's testimony and petitioner's own statements in rendering his decision.

ACCORDINGLY, IT IS ORDERED THAT:

1. Petitioner's appeal is denied;
2. The Administrator's denial of an airman medical certificate to petitioner is affirmed.

VOGT, Chairman, COUGHLIN, Vice Chairman, LAUBER, HART and HAMMERSCHMIDT, Members of the Board, concurred in the above opinion and order.